

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

MAY 8 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

ERNEST LAHTI, LINDA LAHTI AND APPLIED RESERVE
ANAYLSIS, LLC, a California Corporation,

Plaintiffs,

No. C08-2314 BZ

v.

DAN BLOOMQUIST, REBECCA BLOOMQUIST,
HIGHLANDS ELECTRONICS, LLC, an Arizona
Corporation and DOES 1 through 50 inclusive,

Division _____

Defendants.

MOTION TO DISMISS

Defendants Dan Bloomquist, Rebecca Bloomquist, Highlands Electronics, LLC, and DOES 1 through 50 inclusive ("defendants") make a special appearance without admitting jurisdiction and request that plaintiff's application for a temporary restraining order be dismissed for the reason that the United States District Court, Northern District of California lacks subject matter jurisdiction. The contract at issue in this matter, attached as Exhibit A, clearly states that all legal issues related to the contract are to be resolved under the sole jurisdiction of the state of Arizona.

This motion is further supported by the following Memorandum of Points and
Authorities.

RESPECTFULLY SUBMITTED this 8th day of May, 2008.

By Rebecca Bloomquist
Rebecca Bloomquist on behalf of Defendants

**MEMORANDUM OF POINTS AND AUTHORITIES
RE MOTION TO DISMISS**

CHRONOLOGY

The following chronology is applicable:

1. Plaintiffs Ernest Lahti, Linda Lahti, and Applied Reserve Analysis, LLC, a California Corporation, ("plaintiffs") applied for a temporary restraining order on May 5, 2008.
2. Plaintiffs served defendants with the application on May 5, 2008 at 4:20 p.m.
3. A hearing on plaintiffs' application for a temporary restraining order is set for Friday, May 9, 2008 at 9:00 a.m.

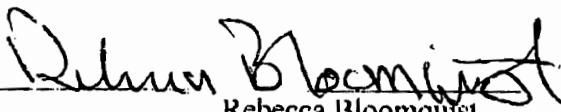
LACK OF SUBJECT MATTER JURISDICTION

Pursuant to the parties' contract on which this matter is based in its entirety, the parties agreed that any claims relating to the contract would be resolved only under the laws of the State of Arizona. Therefore, the state of California, including this court, lacks jurisdiction over this matter.

REQUEUST FOR DISMISSAL

Based upon the foregoing, defendants request this matter be dismissed with prejudice and request that plaintiffs be ordered to pay all of their reasonable attorneys' fees and costs in this matter.

RESPECTFULLY SUBMITTED this 8th day of May, 2008.

By 
Rebecca Bloomquist

FROM : RESERVE ANALYST SOFTWARE

FAX NO. : 9285373377

May. 08 2008 08:32AM P3

COPY of the foregoing Motion to Dismiss

Mailed via electronic mail and US Mail this 8th day of

May, 2008 to:

Mark D. Byrne, Esq.

Law Office of Triano & Byrne

25 Jessie Dr., 16th Floor

San Francisco, CA 94105

mailbox@martinfriano.com

By

A handwritten signature in black ink, appearing to read 'Rebecca Bloomquist', written over a horizontal line.

REBECCA BLOOMQUIST

Exhibit A

Reserve Analyst© Professional Licensing Agreement

5 Year Automatic Renew

This agreement is between:

Licensor: Dan and Rebecca Bloomquist, dba Highlands Electronics LLC, a limited liability corporation, and/or Reserve Analyst© software located at #75 County Road 3151, Vernon, Arizona 85940, hereafter referred to as Licensor; and

Licensee: Ernest and Linda Lahti dba Lahti Financial Group and/or Applied Reserve Analysis, LLC located at 1556 New Long Valley Road, Clearlake Oaks, California 95423 and 4040 Civic Center Drive, Suite 200 San Rafael, California 94903, hereafter referred to as Licensee

License Fee(s): Minimum fee: \$2,000.00 (two thousand dollars) annually

Maximum fee: \$10,000 (ten thousand dollars) in the first year of this agreement, and increased in each successive year by the CPI published by the Federal Reserve in the previous year, hereafter referred to as License Fee.

This License Fee is based upon 5% of gross sales of Licensee for reserve study preparation services only. Any other fees collected by Licensee, not part of the original contract, e.g., extra copies of the report, meetings, depositions, etc., are not a part of the Licensing Agreement fee structure (License Fee). The initial payment of \$2,000.00 (Two Thousand dollars) is due and payable prior to each licensing year.

In order to continue to retain an 'Exclusive Rights Territory', as outlined in (6.) below, Licensee is required to annually pay the Maximum License Fee. Failure to remit the annual Maximum License Fee each year of this licensing agreement will cause the 'Exclusive Rights Territory', as outlined in (6.) below, to become null and void for the duration of this Licensing Agreement. Reporting and additional licensing payments will be made quarterly within 30 days after the last day of May, August, November and February. At the discretion of the Licensee, payments can be made monthly or the Maximum License fee may be paid as a lump sum.

Upon Licensor's request, and at mutually agreeable times, but no more than once in any calendar year, Licensor, or an agent of Licensor, shall be provided reasonable access at Licensee's place of business, during normal business hours, to the sales records of Licensee for the purpose of audit.

The License Fee entitles and obligates the Licensor to the following:

1. The latest version of reserve software shall be provided to Licensee as it becomes available.
2. Technical software support shall be available to Licensee during normal business hours.
3. Licensee shall not be used for Beta Testing new software versions.
4. The Licensor shall keep the source code for the currently released version of the software on hand so as to remedy any technical problems in a timely manner for that release.
5. In the event Licensor discovers a technical problem with the current software release, the Licensee will be notified within 5 business days and resolution will be made as stated in article (4.) above.
6. Whereas the Licensee has developed their northern California business, the Licensor agrees not to direct market software to the following California counties without the written approval of the Licensee, hereafter referred to as "Exclusive Rights Territory":

• Contra Costa	• San Mateo	• Mendocino
• Sonoma	• Santa Clara	• Sierra
• Napa	• San Francisco	• Nevada
• Solano	• Santa Cruz	• Placer
• Sacramento	• Monterey	• El Dorado
• Marin	• San Benito	• San Joaquin
• Alameda	• Butte	

Definitions: For the purpose of this License Agreement the following terms will be defined.

Direct Market: Advertising circulars or other printed matter sent directly through the mail to prospective customers or contributors. Direct marketing is a form of marketing that attempts to send its messages directly to consumers, using "addressable" media, such as mail. Therefore, direct marketing differs from regular advertising in that it does not place its messages on a third party medium, or in the agora, such as a billboard or a radio commercial would. Instead, the marketing of the service or commodity is addressed directly to the end consumer.

Self-Managed: Refers to any Homeowners' Association, Community Association or other Common Interest Development that is managed solely by an elected, or otherwise appointed, usually volunteer, Board of Directors.

The Licensor retains the right to sell the Single User Version of the software to self-managed common interest developments within Licensee's Exclusive Rights Territory when inquiry is made via the internet, written mail, facsimile or telephone by any self-managed common interest developments.

Authorized Users

For this License Agreement "Authorized Users" are: Full and part time employees of Licensee, whose primary work station/location is located at 1556 New Long Valley Road, Clearlake Oaks, California 95423 and/or 4040 Civic Center Drive, Suite 200 San Rafael, California 94903. Use of Reserve Analyst® software on portable lap top computers by Authorized Users is a permitted use. If the Licensee's business is transferred to another entity while this License Agreement is in force the primary work station/location may be updated, in writing, from the new entity.

Limitations on who may use Reserve Analyst® software

Licensee shall not knowingly permit anyone other than Authorized Users to use Reserve Analyst® software. Any full and part time employees of Licensee whose primary work station/location is not located at 1556 New Long Valley Road, Clearlake Oaks, California 95423 and/or 4040 Civic Center Drive, Suite 200 San Rafael, California 94903 are not Authorized Users. Licensee is required to inform Licensor of any known infractions of the use of Licensor's software within the "Exclusive Rights Territory" in a timely manner either by writing, including electronic, or telephone. The Licensor will take action in order to protect and defend copyright of the software for Licensor and authorized users. The Licensee may join Licensor in such actions at their discretion.

Term

Unless terminated as set forth herein, this License Agreement will commence on February 28th, 2006, the "Effective Date", and will continue for 5 years, referred to as "Initial Term". Thereafter, this License Agreement will automatically renew on the Effective Date anniversary for additional five (5) year periods unless either Party gives notice of its intent not to renew, at least sixty (60) days prior to the expiration of the Initial Term, or any five (5) year renewal thereof. The Initial Term and any renewals will collectively be referred to as "Term". If the Licensee's business is transferred to another entity this software License Agreement will remain in effect until the expiration of the current Term.

Termination

Either Party may terminate this License Agreement with a sixty (60) day prior written notice after the second (2nd) year of this License Agreement. If either Party defaults in the performance of any material provision of this License Agreement, then the non-defaulting Party may terminate the License Agreement upon thirty (30) days' written notice if the default is not cured during such thirty (30) day period. This License Agreement may be terminated by one Party immediately at any time, without notice, upon (i) the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of such Party's debts, (ii) such other Party making a general assignment for the benefit of creditors, or (iii) such other Party's dissolution.

Effect of Termination

The license granted in this License Agreement will immediately terminate upon the effective date of the termination or expiration. Within thirty (30) calendar days after termination or expiration of this License Agreement, Licensee will deliver to Licensor or destroy all copies of the Reserve Analyst® software and furnish to Licensor a certification signed by an officer of Licensee verifying that such delivery or destruction has been fully effected.

No Assertion of Rights

It is expressly understood and agreed that, as between Licensor and Licensee, all right, title and interest in and to Reserve Analyst® software vests solely and exclusively in the Licensor. Licensee shall neither derive nor assert any title or interest in or to Reserve Analyst® software except as granted under this Licensing Agreement.

Independent Contractor Status

Licensee is an independent contractor under this agreement and nothing here-in shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Licensee shall have no authority to enter into agreements of any kind on behalf of Licensor and shall not have the power or authority to bind or obligate Licensor in any manner to any third party.

Scope of Agreement

The parties hereto affirm that this Licensing Agreement is the complete and exclusive statement of agreement between them and supersedes all proposals, understandings and communications between the parties relating to the licensing of Reserve Analyst® software. This Licensing Agreement may be amended only by a subsequent writing that specifically refers to this agreement and is signed by representatives of both parties and no other act, document, usage or custom shall be deemed to amend this Licensing Agreement.

By installing or using this Highlands Electronics LLC product (the "RESERVE ANALYST SOFTWARE") you indicate your agreement to the terms of this Licensing Agreement. If you do not agree to the terms herein, you are not authorized to copy or use the RESERVE ANALYST SOFTWARE. The RESERVE ANALYST SOFTWARE, including all images, photographs, icons and text incorporated in the

FROM : RESERVE ANALYST SOFTWARE

FAX NO. : 9285373377

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NO WARRANTIES

To the maximum extent permitted by applicable law, the Highlands Electronics LLC expressly disclaims any warranty for Reserve Analyst software. Reserve Analyst software and any related documentation is provided "as is" without warranty of any kind, either express or implied, including without limitation, the implied warranties of merchantability, fitness for a particular purpose and noninfringement of third party proprietary rights. The entire risk arising out of use or performance of Reserve Analyst software remains with you.

NO LIABILITY FOR DAMAGES

To the maximum extent permitted by applicable law, neither the Highlands Electronics LLC nor its suppliers shall be liable for any incidental, special or consequential damages whatsoever (including without limitation, damages for loss of business profit, business interruption, loss of business information, or any other pecuniary loss) arising out of or relating to the use or inability to use Reserve Analyst software, even if the Highlands Electronics LLC has been advised of the possibility of such damages. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you. Furthermore, the Highlands Electronics LLC's liability for direct damages shall not exceed the license fee, if any, paid by you for use of Reserve Analyst software.

Governing Law

All questions concerning the validity, operation, interpretation and construction of this Licensing Agreement will be governed by and determined in accordance with the laws of the State of Arizona in Apache County, city of St. Johns. No claim relating to this License Agreement shall be made by either party more than one year after the cause of action arose.

In witness whereof, the parties have caused this agreement to be executed by authorized representatives as set forth below:

Dated 3/8/2006, 20

Signed: [Signature]

Signed: [Signature]

Signed: [Signature]

Signed: [Signature]